

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,

Plaintiff,

Criminal No. 11-0042-003  
**ELECTRONICALLY FILED**

v.

MARCUS ALLEN,

Defendant.

**MEMORANDUM ORDER OF COURT RE: PRO SE DEFENDANT'S MOTION TO USE  
A 'CATEGORICAL' APPROACH FOR DETERMINING WHETHER A CRIME IS A  
CRIME OF VIOLENCE AND A REQUEST FOR A CERTIFICATE OF  
APPEALABILITY (DOC. NO. 1361)**

Presently before this Court is a four page handwritten document, which was mailed to this Court by *Pro Se* Defendant/Petitioner in an attempt to seek relief from his 96 month term of imprisonment for his role in a large-scale heroin distribution conspiracy. Doc. No. 1361.

Generally, it appears that Allen contends that his sentence exceeds the applicable advisory guideline range and other statutory limits because he should not have been classified as a career offender and the drug quantity was incorrectly applied. *Id.* Allen argues that a certificate of appealability should be issued because reasonable jurists could debate the merits of his substantive arguments. *Id.* In an abundance of caution, the Court ordered the Government to respond to Allen's latest Motion, which the Government has done. Doc. Nos. 1362 and 1363.

As noted by the Government, the present Motion must be denied because it is a second or successive request for relief pursuant to 28 U.S.C. § 2255. Allen has attempted to disturb his sentence of 96 months imprisonment, which was the product of this Court's acceptance of the Parties' stipulated sentence pursuant to Federal Rule of Criminal Procedure 11(c)(1)(C), on

numerous occasions and therefore, the Court relies on its previously filed Opinions, by way of background. Doc. Nos. 1264, 1283, 1316, and 1327. The Court has denied Allen's previous Section 2255 Motions, the denial of which has been affirmed by the United States Court of Appeals for the Third Circuit. Doc. No. 1309. The Court finds that Allen's latest Motion is a second or successive Section 2255 Motion and therefore, it will be denied. A certificate of appealability should not issue pursuant to 28 U.S.C. § 2253 because Allen has not demonstrated that reasonable jurists would find the following Order debatable or wrong.

AND NOW, this 1<sup>st</sup> day of April, 2015, IT IS HEREBY ORDERED THAT Allen's Motion to Use a 'Categorical' Approach for Determining Whether a Crime Is a Crime of Violence and a Request for a Certificate of Appealability (Doc. No. 1361) is **DENIED**. No certificate of appealability should issue.

s/ Arthur J. Schwab  
Arthur J. Schwab  
United States District Judge

cc: All Registered ECF Counsel and Parties

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